

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WHAM-O, INC.,

Plaintiff,

v.

SLB TOYS USA, INC.,

Defendant.

No. C 06-04551 JSW

**NOTICE OF TENTATIVE
RULING AND QUESTIONS FOR
HEARING**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
NOTICE OF THE FOLLOWING TENTATIVE RULING AND QUESTIONS FOR THE
HEARING SCHEDULED ON SEPTEMBER 29, 2006, AT 9:00 A.M.:

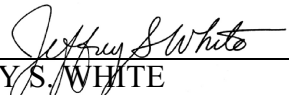
The Court has reviewed the parties' memoranda of points and authorities and, thus, does not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to rely on authorities not cited in their briefs, they are ORDERED to notify the Court and opposing counsel of these authorities reasonably in advance of the hearing and to make copies available at the hearing. If the parties submit such additional authorities, they are ORDERED to submit the citations to the authorities only, without argument or additional briefing. *Cf.* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral argument to explain their reliance on such authority.

The Court **tentatively GRANTS** SLB's motion to transfer. The parties each shall have fifteen minutes to address the following questions:

1. Does SLB agree that it has the burden to establish transfer is warranted?

- 1 2. Does Wham-O agree that this case could have been brought in the Central
- 2 District of California?
- 3 3. Does Wham-O agree that when the merits of this case are addressed, the fact
- 4 finder will be required to assess the “Wave Rider” mark in its entirety and as it
- 5 appears in the marketplace?
- 6 a. If so, and given that the “Wave Rider” is a product in the “SLIP N’
- 7 SLIDE” product line, why would the marks at issue in the Central District
- 8 litigation not be relevant to Wham-O’s claims in this case?
- 9 b. If not, what authority does Wham-O have to support its position?
- 10 4. What is Wham-O’s response to the arguments raised in SLB’s reply that it
- 11 (Wham-O) is likely to take inconsistent positions regarding the strength of its
- 12 marks?

13
14 Dated: September 27, 2006



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE